Nos. 21958 and 21958A

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

GILBERT J. SHEFFELS AND ELEANOR SHEFFELS
Husband and Wife, *Plaintiffs-Appellants*

v.

UNITED STATES OF AMERICA, *Defendant*

MARJORIE HEITMAN, *Plaintiff-Appellant*

v.

UNITED STATES OF AMERICA, *Defendant*

On Appeals from the Judgments of the United States District Court for the Eastern District of Washington

BRIEF FOR THE APPELLEE

MITCHELL ROGOVIN
Assistant Attorney General.

LEE A. JACKSON,
ELMER J. KELSEY,
ROBERT J. CAMPBELL,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:
SMITHMOORE P. MYERS,
United States Attorney.
CARROLL D. GRAY,
Assistant United States Attorney

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BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUE PRESENTED

Whether travel expenses incurred by the taxpayers in connection with tours of the Orient sponsored by the Spokane Chapter of the National People-to-People Movement were contributions made to the United States for exclusively public purposes so as to be deductible under Section 170 of the Internal Revenue Code of 1954.

STATEMENT OF THE CASE

The sole question on this appeal involves the correctness of the District Court's determination that neither Gilbert and Eleanor Shefffels nor Marjorie Heitman (hereinafter sometimes referred to as taxpayers) could deduct expenses incurred in a tour of the Orient under the auspices of the Spokane Chapter of the National People-to-People Movement as charitable contributions pursuant to Section 170 of the Internal Revenue Code of 1954. The District Court filed a joint opinion (I-R. 28-37, 64-73), reported at 264 F. Supp. 85, covering the cases of both the Sheffels and Dr. Heitman and the two appeals have been consolidated before this Court. Although in each instance federal income taxes for the taxable year 1961 are at issue, the two cases have differing procedural origins, as follows:

(1) Gilbert and Eleanor Sheffels initiated a suit for the recovery of taxes, not in issue here, on May 18, 1964. (I-R. 1.) On May 14, 1965, pursuant to Section 7422 (e) of the Internal Revenue Code of 1954 the United States filed a counterclaim for $1,307.80 of taxes and interest, which are the subject matter of this appeal. (I-R. 11.) The District Court entered a judgment in this amount against the Sheffels on May 21, 1968, to correct *nunc pro tunc* the erroneous judgment of May 5, 1967. (Supp. R. 94-95.) Within sixty days after entry of the judgment, on May 16, 1967, the Sheffels filed a notice of appeal. (I-R. 40.)

(2) Marjorie Heitman paid the $608.10 tax in dispute here on October 23, 1964. (I-R. 45.) She filed a claim for refund on November 6, 1964, which was rejected on May 26, 1965. (I-R. 43.) Within the time provided in Section 6532 of the Internal Revenue Code of 1954, on June 8, 1965, she filed suit for recovery of the $608.10 plus interest. (I-R. 42-44.) The District Court dismissed her action on the merits on March 10, 1967 (I-R. 74), and on May 4, 1967, she filed a notice of appeal (I-R. 75).

This Court has jurisdiction by virtue of 28 U.S.C., Section 1291. None of the relevant facts are in dispute.

In 1956, President Eisenhower recommended the formation of some private vehicle to promote a face-to-face, international exchange of ideas between American citizens and their counterparts abroad as a means toward achieving understanding and peace in the world. (I-R. 29-30; II-R. 15.) From this idea there emerged approximately forty national People-to-People committees organized on the basis of profession, e.g., a music committee, a sports committee, a science committee, etc. (II-R. 184, 189.) Later, in 1960 and 1961, local regional organizations, referred to as chapters, were formed whose purpose was to provide facilities and hospitality for foreign visitors and to organize tours of foreign countries. (II-R. 189-190.) Although there was no direct tie-in between the committees and the chapters in their formation, the chapter and many of the committees subsequently became

affiliated with a formal national organization, located in Kansas City after its debut in 1961, People-to-People, Inc. (II-R. 184-185.)

At the early stage of development of the People-to People Program the United States Information Agency (U.S.I.A.) subsidized some of the committees, but by 1958 these ventures where wholly financed with private contributions. (II-R. 186-187.) In Rev. Rul. 57-38, 1957-1 Cum. Bull. 96, the Commissioner recognized that these contributions to committees for use in exclusively advancing the People-to-People Program are allowable deductions as charitable contributions so long as the particular committee became certified by the U.S.I.A. The U.S.I.A. has cooperated with the committees and national organization in rendering guidance and advice, but has not dealt with local chapters. (I-R. 34.) And although it has aided tour groups in securing meetings with their counterparts and in planning itineraries, it has neither sponsored any of the foreign tours nor arranged the necessary travel accommodations, the latter task being left to travel agencies. (I-R. 30.)

The Spokane Chapter, formed in 1960, was one of the first four regional groups organized and has been active from its inception. It sponsored two or three trips to the Orient in 1961 whose stated purpose was "to see the people and have the people see us." Prior to these trips the participants, including the taxpayers herein, would attend several meetings for briefing.

(I-R. 30.) After the participants returned from these trips additional meetings were held so that the touring members could share their experiences with the others. Talks were also arranged before local groups and, in the case of the Sheffels, color slides were presented to illustrate the talks. (I-R. 33-34.)

The Sheffels traveled to the Orient during 1961 in one of the People-to-People sponsored tours. As farmers, they visited farms and discussed agricultural techniques with people they would meet. Their tour took them to seven countries and caused them to spend as much as 95 percent of their time discussing farming in Korea and as little as 30 percent in Hong Kong. They also sent newsletters home for publication in a local newspaper. (I-R. 32-33.) The Sheffels did leave the tour to spend a week on their own in Indonesia, but do not seek a deduction for any expenses relating thereto. (II-R. 144.) They also rested for a day in Hawaii just prior to their return to the United States. (II-R. 157.)

Also in 1961, Marjorie Heitman, a medical doctor, joined a group of other doctors, nurses and teachers in a People-to-People sponsored tour of the Orient, covering ten to thirty days. She spent a great deal of her time in consultations with foreign counterparts, so much so that little time was left for personal shopping or sightseeing. (I-R. 33-34.)

On the evidence presented the District Court concluded that the expenses of these tours were not "for exclusively public purposes" and, accordingly, could not be deducted under Section 170(c) as a contribution to, or for the use of, the United States. (I-R. 34-36.)

SUMMARY OF ARGUMENT

Section 170 of the Internal Revenue Code of 1954 allows a charitable deduction for contributions "to or for the use of * * * the United States," but only if such contributions are made "for exclusively public purposes." The record in this case fully supports the District Court's determination that the Far-Eastern trips taken by the taxpayers, albeit under the sponsorship of the federally encouraged People-to-People Program, were not undertaken "exclusively" for public benefit, and thus do not fit within the statutory framework. Such determination should not be overturned by this Court unless found to be clearly erroneous.

In analogous cases involving claimed tax exemptions of corporations organized and operated "exclusively" for prescribed purposes, it is well established that the use of the qualifier "exclusively" precludes the presence of a single substantial nonprescribed purpose. Whereas, as the District Court found here, the travel expenses in question, far from having been incurred for "exclusively" public purposes, as required by the statute, were incurred primarily for the private benefit of the taxpayers.

The result below is also consistent with the published position of the Commissioner in dealing with similarly situated taxpayers. We submit that, although the publication postdates the tax year here in question, the action of the Commissioner pursuant to the express delegation in Section 170 in determining the extent to which private conduct "exclusively" benefits the United States should receive the similar, weighty consideration attributed to another of his line-drawing rulings in the most recent term of the Supreme Court.

ARGUMENT

THE DISTRICT COURT CORRECTLY HELD THAT TRAVEL EXPENSES INCURRED BY TAXPAYERS IN CONNECTION WITH TOURS OF THE ORIENT SPONSORED BY THE SPOKANE CHAPTER OF THE NATIONAL PEOPLE-TO-PEOPLE MOVEMENT DID NOT EXCLUSIVELY BENEFIT THE UNITED STATES AND THUS WERE NOT PROPERLY DEDUCTIBLE AS CHARITABLE CONTRIBUTIONS WITHIN SECTION 170 OF THE INTERNAL REVENUE CODE OF 1954.

Taxpayers traveled to several Far-Eastern countries during 1961 as members of tours sponsored by their local chapter of the People-to-People Movement. As appellants herein they seek to convince this Court that their transportation, food and lodging expenses in connection with these trips are deductible from their 1961 federal income tax as charitable contributions. They emphasize their diligence and goodwill in participating in such a worthwhile venture, together with a belief that the United States has materially benefited from their interchanges with counterparts abroad, as

reasons for the allowance of the claimed deductions.

In resisting taxpayers' claims, the Government wishes to make clear that it intends no discredit upon either the individual motives of the taxpayers or the general objective of the People-to-People Movement. We readily recognize that private citizens can do much in this area to promote Americanism around the world and thereby enhance the chances for genuine peace and understanding. There are, indeed, many such fields and endeavors possessing similar, commendable objectives, but that attribute, unfortunately for the taxpayers, is not the touchstone for deductibility. Rather, the proper inquiry in determining whether a person can reduce his federal tax bill is, as well stated in *Estate of Blaine* v. *Commissioner,* 22 T.C. 1195, 1212 (1954)—

> * * * neither whether the organization is worthy, nor whether it is engaged in desirable activities, but it is whether the particular matter under review is covered by the specific statutory provision relating to it. * * *

See also *Reed* v. *Commissioner,* 35 T.C. 199, 202 (1960); *ErSelcuk* v. *Commissioner,* 30 T.C. 962, 965 (1958); and *Cook* v. *Commissioner,* 30 B.T.A. 292, 295 (1934). We can thus proceed to a consideration of the applicable statutory provision and the legal tests asserted therein.

A. *The record fully supports the ultimate finding of the District Court that the taxpayers' travel expenses were notpayments "for exclusively public purposes"*

Section 170(a)(1) allows the deduction of a charitable contribution in the taxable year in which the payment is made; Section 170(c)(1) defines charitable contributions as made to, or for the use of, the United States "for exclusively public purposes."[9] According-

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[9]Internal Revenue Code of 1954:

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) *Allowance of Deduction.*—

(1) *General rule.*—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

* * *

(c) *Charitable Contribution Defined.* — For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a Territory, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

* * *

(26 U.S.C. 1964 ed., Sec. 170.)

ly, the single, narrow issue before this Court is whether taxpayers' expenditures on their respective tours of the Orient came within the above statutory limitation of those "exclusively" benefiting the United States.

On the evidence presented the District Court found that the expenses incurred by the taxpayers in connection with their respective tours of the Orient were not exclusively for public purposes, as required by the statute, and, consequently, could not be deducted. The court found that the expenses were for the personal use of the taxpayers as well as for the United States; and, even further, the court considered that the taxpayers were the primary beneficiaries of the expenses and the purposes of the Government were served only incidentally, thus clearly falling outside of the "exclusively" standard enunciated by Congress. (I-R. 35.) Such basic and ultimate findings by a trial court should not be set aside unless clearly erroneous, i.e., the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *United States* v. *Gypsum Co.,* 333 U.S. 364, 395 (1948); *Van Der Veen* v. *United States,* 349 F. 2d 583, 586, 587 (C. A. 9th, 1965); *Los Angeles Extension Co.* v. *United States,* 315 F. 2d 1 (C. A. 9th, 1963); Rule 52(a) of the Federal Rules of Civil Procedure. The record fully supports this ultimate factual finding, as follows:

1. Neither the foreign tours nor the activities of the local chapters were in any sense sponsored by an

agency of the United States. To be sure, the idea of a People-to-People Program was initially formulated by President Eienhower (he appointed some forty-odd chairmen of the national committees (II-R. 184)) and the Government through the U.S.I.A. gave some limited financial and administrative support to these committees to get them off the ground. But by 1958 (and certainly during the year 1961 involved here) its function was strictly liaison, similar for the most part to its relationship with business and service organizatons like the Rotary and Lions Clubs. (II-R. 187.) Indeed, the U.S.I.A. took specific exception to any claims that it sponsored the People-to-People tours. (I-R. 34.) And the Spokane Chapter itself, in the words of its chairman, Dr. Hunter, confirmed the private aspect of the organization (I-R. 31):

> The Spokane Chapter is engaged in acts of private initiative, using private money, for the purpose of increasing international understanding and friendship . . . The Spokane Chapter does not seek or desire any government sponsorship or funds and does not claim any sponsorship of any government agency. * * *

2. After considering the taxpayers' detailed testimony concerning their activities on the tours (Heitman, II-R. 61-85; Sheffels, II-R. 88-176) the District Court concluded that it could see "very little difference between the private trips made by the ordinary tourist and those made by taxpayers here" (I-R. 35). According to the uncontroverted testimony of Mr.

Arnold Hanson, a U.S.I.A. official familiar with the People-to-People tours from their beginning, Government officials abroad gave their People-to-People tour groups no more or less assistance than other private tour groups, and would not give away assistance unless requested to do so. (II-R. 177-181.) Although there were, as between the taxpayers here, variances in the percentage of time each spent in furtherance of the People-to-People aspect of the trips (e.g., the *Sheffels* spent as little as 30 percent of their time in Hong Kong on farm matters, while Dr. Heitman spent most of her time in hospitals) and thus there were inevitably variances in the amount of benefit which the United States may have received from any one tour participant, the court was unable to find that either of the taxpayers benefited only incidentally from their experiences. Indeed, far from primarily imparting benefits to others, the tour groups did as much, if not more, learning while on these trips. Gilbert Sheffels, for one, expressed disappointment on this score (II-R. 155), and his wife testified that "We naturally got a lot more because we were seeing their countryside" (II-R. 171). Probably most illustrative of the lack of any significant difference between these People-to-People tours and private trips of responsible citizens is Gilbert Sheffels' observation that his most successful imparting of knowledge and goodwill was during his side trip to

Indonesia, when he concededly was traveling as a private tourist. (I-R. 155.)

There is, therefore, no sufficient basis in the record for setting aside the considered judgment of the District Court short of the clearly improper one of allowing a deduction based on a person's sense of the noble mission to promote understanding among the peoples of the world. If such were the law, travelers generally who might show such a purpose would be permitted a taxpayer-financed tour of foreign lands.

B. *Such a result is in accord with the recognized standard that "exclusively" precludes the presence of a single substantial noncharitable purpose.*

Taxpayers contend (Br. 12) that the "exclusively" requirement of Section 170(c) should not be strictly followed. Since no contribution could be made to the United States without the donor's retaining some benefit and since it is not known what Congress meant by the term "exclusively," taxpayers urge the reasonableness of concluding that Congress did not intend to preclude the deductibility of such obviously beneficial conduct as their People-to-People tours of foreign countries.

However laudatory may have been taxpayers' purposes in undertaking these foreign trips, they cannot be given a deduction which the statute does not allow. They would read Section 170(c) (1) as though "ex-

clusively" had been omitted and state the applicable standard as one that would permit charitable deductions so long as some significant benefit inures to the United States. But merely because some incidental benefit may accrue to an individual from his participation as the donor of a charitable contribution—as, e.g., when the Mellons gave the National Art Gallery to the nation—we contend that this is not license to remove completely a Congressionally-imposed limitation on the deductibility of a charitable contribution to the United States. It is much more reasonable to assume that Congress meant to exclude from Section 170 those contributions with significant substantial private benefit than to conclude that the word "exclusively" was mere surplusage and without meaning. Indeed, this is precisely how the Supreme Court has interpreted the usage of the word "exclusively" in a closely analogous context.

In *Better Business Bureau v. United States,* 326 U.S. 279 (1945), the Court, in interpreting Section 811(b)(8) of the Social Security Act, c. 531, 49 Stat. 620 (which provided an exemption from social security tax for corporations "organized and operated exclusively for * * * scientific * * * or educational purposes"), stated that "exclusively" plainly meant without the presence of a single noneducational purpose substantial in nature, regardless of the number or

importance of the purely educational puposes.[2] The Court met (*supra,* p. 283) the argument of counsel that a liberal construction should be applied to an act which exempts from taxation religious, charitable and educational institutions with the following response:

> Even the most liberal of constructions does not mean that statutory words and phrases are to be given unusual or tortured meanings unjustified by legislative intent or that express limitations on such an exemption are to be ignored. Petitioner's contention, however, demands precisely that type of statutory treatment. Hence it cannot prevail.

Thus the recognized standard for charitable contributions—if any meaning at all is to be given the Congressional usage of the limiting word, "exclusively"—requires a disallowance of the deduction where

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[2]See also, *Scripture Press Foundation* v. *United States,* 285 F. 2d 800 (Ct. Cl., 1961), certiorari denied, 368 U.S. 985 (1962;) *Hammerstein* v. *Kelley,* 235 F. Supp. 60 (E.D. Mo., 1964), affirmed, 349 F. 2d 928 (C. A. 8th, 1965); *Krohn* v. *United States,* 246 F. Supp, 341 (Colo., 1965), which emphasize that where the noncharitable aspect of the endeavor is more than merely incidental, the substantiality of the charitable aspect cannot alone satisfy the "exclusively" standard.

both the individual and the United States receive a substantial benefit by reason of the contribution. Such a dual benefit simply does not satisfy the statute.[9]

C. *Such a result is also in accord with the Commissioner's outstanding rulings with respect to the People-to-People Program, rulings which have been issued pursuant to the specific statutory delegation contained in Section* 170(a)(1)

Section 170(a)(1) provides that a charitable contribution shall be deductible "only if verified under regulations prescribed by the Secretary or his delegate." Pursuant to this grant of authority, the Commissioner has issued countless rulings on the charitable status of various activities and organizations, including some covering the People-to-People Program.

In Rev. Rul. 57-38, 1957-1 Cum. Bull. 96, the Commissioner considered the deductibility of cash contributions made to the committees organized to carry out the People-to-People Program and actual expenses incurred by members of these committees in the course

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[9]For this reason, it is not possible to allocate the Section 170 deduction between the charitable and noncharitable aspects of the endeavor as we are able to do with business trips which are partly for pleasure under Section 162(a). Section 162(a) has no similar "exclusively" standard.

of rendering volunteer services to them. Because the People-to-People Program was one in which the Government was keenly interested, he concluded that both the cash contributions to these committees and the out-of-pocket expenses of their members exclusively in furtherance of the People-to-People Program were contributions for the use of the United States and, accordingly, deductible under Section 170. As a check, however, the Commissioner required that the committees seeking tax deductions for its members obtain annual certification from the U.S.I.A. to verify their activities as exclusively in furtherance of the People-to-People Program.

This ruling, issued in 1957, when there were no local chapters of the type involved in the instant case, referred only to the national committees organized along professional lines, which, as we have seen, had an

intimate connection with the Federal Government (President Eisenhower appointed the committee heads[9] and the U.S.I.A. was at the time partially subsidizing them). Moreover, the record does not show that these committees were then undertaking the planning and recruitment for overseas tours in which local chapters were later to be primarily involved. Thus, the nature of the services performed and the expenses incurred by persons serving on these committees, involving purely domestic work, was unlikely to contain the kind of individual benefit inherent in the overseas trips.

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[9]One aspect of the planning for these trips of concern to the Government is the somewhat informal basis upon which the "People-to-People" label can be placed upon a tour. The policy appears to be that a tour aspirant does not usually become a chapter member until he decides to take the tour, thus bringing into question the motivation for joining the chapter, i.e., whether the primary objective might have been the tax-deductible aspect of the trip rather than its patriotic objective. Indeed, the record even shows that on occasions nonmembers come in and ask to lead tours. (II-R. 35.)

In Rev. Rul. 64-216, 1964-2 Cum. Bull. 63, the Commissioner had occasion to consider the deductibility of foreign tours under the auspices of the People-to-People Program. While admitting that such tours may sometimes be consistent with the objectives of the program, the ruling stated that they are not payments made exclusively for the use of the United States and were not of the type of deductible expense contemplated by Rev. Rul. 57-38, *supra*. The ruling thus precludes tour participants from deducting any expenditures in connection with the tours.

This ruling, though published subsequent to the year involved here, is a proper administrative resolution of this problem by the Commissioner pursuant to his rule-making power. Taking the two rulings together, he has engaged in the kind of administrative line-drawing approved most recently by the Supreme

Court (*United States* v. *Correll,* 389 U.S. 299 (1967)) and which if although arbitrary, is reasonable, ought to be approved by this Court. Thus, in this respect the content of the 1964 ruling is relevant to this Court's consideration because an adverse ruling in either of the two cases would undermine the Commissioner's carefully drawn line.[9]

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[9]The lengthy record testimony in the instant case should be enough to demonstrate the wisdom and necessity of drawing such a line. There is, of course, no reason to believe that the Sheffels and Dr. Heitman have been anything but completely candid in their testimony with respect to the context of their trips. The Commissioner, however, simply does not have the resources to check on the stories of the countless other participants of the People-to-People tours who might not be so candid to ascertain the relative degree of personal benefit inuring to them. It is, therefore, apparent that the Commissioner must seek a solution based on the mainsprings of human conduct, the result of which relegates foreign trips to the category of a highly desirable personal venture and thus not deductible as charitable contributions.

CONCLUSION

For the above stated reasons, the decision of the District Court in each case should be affirmed.

Respectfully submitted,

MITCHELL ROGOVIN,
Assistant Attorney General.

LEE A. JACKSON,
ELMER J. KELSEY,
ROBERT J. CAMPBELL,
Attorneys,
Department of Justice,
Washington, D.C. 20530

Of Counsel:

SMITHMOORE P. MYERS,
United States Attorney.

CARROLL D. GRAY,
Assistant United States Attorney

SEPTEMBER, 1968.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on opposing counsel by mailing two copies thereof to each on this _____ day of September, 1968, in envelopes, with postage prepaid, properly addressed to them as follows:

FRANCIS J. BUTLER
BUTLER & LUKINS
725 Lincoln Building
Spokane, Washington 99201

JOHN E. SNODDY
1231 Old National Bank Building
Spokane, Washington

United States Attorney